THE LAW OF EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION. Fourth Edition. By Thomas Beven. London: Stevens and Haynes. 1909. pp. lxxxiv, 953.

The genesis and history of this work are recounted at some length in the Preface; and recounted entertainingly, as those who are familiar with the author's style would expect. It is called a fourth edition, but the treatise before us is substantially a new book, and quite up to date.

It is divided into three parts. The first, occupying about one hundred and twenty pages of the text, deals with "Employers' Liability at Common Law." This liability is set forth in a series of propositions, accompanied by illustrations, much in the form of a draft for a code. As a result, we have a condensed but lucid statement of common-law principles applicable to the relation of master and servant.

Part second is devoted to the Employers' Liability Act of 1880, and fills nearly two hundred pages. While some of the principles peculiar to this branch of the subject are epitomized in propositional form, this portion of the work consists mainly in a running commentary on the important provisions of the statute. In fact, the author attempts, here, to do little more than collate, digest, and criticize decisions which have been evoked by this legislation. It is interesting to compare these decisions with those relating to the law of master and servant before the statute was passed. Now the court is commonly compelled to direct its attention primarily to the construction of statutory language. Is a vicious horse, which is supplied by an employer for use in his business, a defective "plant,"[1] within the meaning of that term in the Act? This is a fair illustration of the questions now brought before the courts for determination. Formerly, the decisions turned, not upon the sense in which a particular word was to be understood, but upon the correct legal principle to be applied to the facts and circumstances of the particular case.

Part third is given up to the Workmen's Compensation Act of 1906, and has the lion's share of the volume — about six hundred pages. This includes an appendix of two hundred pages; an appendix of unreasonable size, the author declares, because of "the peddling pedantries of indefinite code making." He assures us that

> "The Workmen's Compensation Act was at first intended to be so simple that a workman, without aid of counsel or solicitor, should be able to get the advantage it gives him from his employer. To work out this object, a power to make rules is given to a body of County Court judges. This first effort in simplifying produced eighty-five rules, some of which meander through pages of print, and are made, if it were possible, more intolerable by sixty-seven forms attached to them by way of appendix. Then, within a twelvemonth, pages more of rules and forms are produced. The Treasury joins in showering its benefit of rules on the workman, and so does the Home Secretary, and so do the Treasury and Home Secretary jointly, and so does the Registrar of Friendly Societies."

It is this network of statute, by-laws, and regulations which is now being dangled before the eyes of American legislators, as proof of the assertion that we are wofully behind the times. Whether this volume will convince such legislators that they ought to follow the example of the British Parliament and enact a workmen's compensation statute is doubtful. Certainly, Mr. Beven makes no secret of his view that the Act of Parliament in question is a huge blunder. In his opinion it "does not readily lend itself to the application of familiar legal principles. The method of dealing with 'serious and wilful misconduct,' 'industrial diseases,' and in this connection with fraudulent misrepresentation 'not in writing,' 'illegitimate children,' 'casual employment,' 'concurrent contracts,' to mention only a few features, requires a faculty of mental adjustment, perhaps

[1] Yarmouth *v.* France, 19 Q. B. D. 647, 57 L. J. Q. B. 7.

not ordinarily possessed, save by the philosophers of the Trade Unions or politicians panting for a seat in Parliament on any terms. The note of all this," adds our author, "seems not inaptly summed up in the formula, 'The real friend is Codlin, not Short.'"

One of the objects of the framers of this Act was to eliminate formal legal proceedings and to substitute therefor conciliation committees and private arbitrators, in case of injuries to workmen in the course of their employment. And yet, Mr. Beven declares, "the convenience of the County Court procedure has been recognized to an extent that is almost universal."

We commend the entire volume to the careful perusal not only of every lawyer, but of every citizen who is interested in the progressive tendency to make the relation of master and servant a matter of state regulation. F. M. B.

THE FIXED LAW OF PATENTS, as Established by the Supreme Court of the United States and the Nine Circuit Courts of Appeals. By William Macomber. Boston: Little, Brown and Company. 1909. pp. cxlv, 925.

The object of this book of some nine hundred pages is to set forth the fixed law of patents, and for this purpose the author has confined himself to the decisions of the ultimate appellate tribunals, the United States Supreme Court and the Courts of Appeal. The task which Mr. Macomber has set for himself is an ideal one, but almost impossible to perform because of the nature of the subject; for in Patent Law a mass of ancillary law has been built up by the decisions of the courts, which is true when applied to the particular cases and the patents involved, but which is not to be applied to a different state of facts. The task is also difficult because even the law which may be regarded as fixed is not in fact fixed. Two striking instances of the danger of assuming that any principle in the Patent Law is fixed except the foundation statutes, are represented by decisions of the Supreme Court during the past year. In *Leeds & Catlin* v. *Victor Talking Machine Co.*, 213 U. S. 301, the Supreme Court held that under section 4887 of the Revised Statutes one claim of a patent might expire with a prior foreign patent, whereas the other claims might continue as a monopoly for seventeen years, thus overruling the *dicta* to the contrary in *Siemens* v. *Sellers*, 123 U. S. 276. And in *Expanded Metal Co.* v. *Bradford*, 214 U. S. 366, the Supreme Court sustained a patent for a process the steps of which were all mechanical and did not involve any chemical or other elemental action, thus apparently setting at rest the doubt as to the patentability of mechanical processes raised by the case of *Risdon Works* v. *Medart*, 158 U. S. 68. Moreover many holdings and even *dicta* of the lower courts have become fixed law by general acceptance. A notable example is the rule of priority of invention laid down by Judge Story in *Reed* v. *Cutter*, 1 Story 590. The character of the court does not fix the law, but it is fixed by its own inherent rightfulness.

Mr. Macomber begins his book with a brief survey of his subject wherein the matter is divided into headings, which arrangement is followed in the body of the work. Under the admirable classification and sub-classifications of subjects the author has quoted the language of the appellate courts on the points involved. It would perhaps have made the task of the reader more easy if he had placed in quotation marks the language quoted, so as to separate the remarks of the court from the author's own summing up or digest. The reader is obliged to exercise care in order to distinguish between them.

Of course, where the remarks of the courts are so extensively quoted as in this work it is practically impossible to distinguish between those parts which form the actual decision of a case and those parts which are either *dicta* or the contributing principles underlying the final decision. Nor is it always safe to